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GARDNER *v.* MOORE'S ADM'R.

Nov. 15, 1917.

[94 S. E. 162.]

1. **Gifts (§ 18 (1)*)—Delivery.**—A gift, to be irrevocable, must be completed by delivery.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 718.]

2. **Gifts (§ 19 (2)*)—Delivery—Statute.**—Code 1904, § 2414, providing that when a donor and donee reside together, the donee's possession of the gift at the place of residence is not a sufficient delivery, etc., is inapplicable to an attempted gift of a portion of a judgment.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 721.]

3. **Assignments (§ 49*)—Gifts (§ 31 (1)*)—Assignment of Judgment—"Bill of Exchange."**—An instrument, directing part payment of a judgment to a designated party, held not an assignment, but a bill of exchange, under Negotiable Instruments Law (Code 1904, § 2841a, cls. 126, 127), defining bills of exchange and providing that they do not operate as assignments, and delivery of the instrument did not constitute a completed gift of the judgment fund.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Bill of Exchange. For other cases, see 1 Va.-W. Va. Enc. Dig. 762; 6 Va.-W. Va. Enc. Dig. 715.]

Error to Circuit Court, Rockingham County.

Proceedings by M. J. Gardner against Rhoda E. Moore's Administrator. Judgment for defendant and plaintiff brings error. Affirmed.

John Paul, Ward Swank, and *H. W. Bertram*, all of Harrisonburg, for plaintiff in error.

D. O. Dechert, D. W. Earman and *Edward C. Martz*, all of Harrisonburg, for defendant in error.

HOSTER'S COMMITTEE *v.* ZOLLMAN et al.

Nov. 15, 1917.

[94 S. E. 164.]

1. **Specific Performance (§ 8*)—Discretion.**—Specific performance of contracts to convey real estate is not a matter of right, but of sound judicial discretion, governed by well-established general rules and principles.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 483.]

2. **Specific Performance (§ 28 (1), 49 (2)*)—Contract—Consideration.**—To warrant specific performance, the contract must be based

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

upon either a valuable or meritorious consideration, and its terms must be definite.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 491, 505.]

†3. **Specific Performance (§ 6, 32 (1), 105 (3)*)—Mutuality—Good Faith.**—There must be mutuality in both the obligation and the remedy, and the person seeking specific performance must show himself to have been ready, desirous, prompt, and eager in the assertion of his rights.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 499, 569; 16 Va.-W. Va. Enc. Dig. 1136, cited by the court.]

4. **Specific Performance (§ 105 (3)*)—Laches—Reason for Delay.**—Where more than 13 years elapsed between the date of contract to convey realty and adjudication of the purchaser's insanity, and no reason for the delay is shown, suit by the purchaser's committee for specific performance is barred.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 569, cited by the court.]

5. **Evidence (§ 400 (2)*)—Parol Evidence—Supplying Agreement.**—While parol evidence may be introduced to supply deficiencies in the description of land, or to explain ambiguities in the agreement, such evidence cannot be introduced to supply the lack of an agreement, or by construction to alter or vary it, and create a different agreement from that to which the parties have assented.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 644.]

Appeal from Circuit Court, Rockbridge County.

Bill by C. S. W. Barnes, committee of W. A. Hoster (a person of unsound mind), against A. M. Zollman and others. Demurrer to bill sustained, and complainant appeals. Affirmed.

Wallace Ruff and *C. S. W. Barnes*, of Staunton, for appellant.

Curry & Curry, of Staunton, *H. S. Rucker*, of Buena Vista, *Hugh C. Davis* and *Wm. A. Anderson*, of Lexington, for appellees.

BOWEN'S EX'R et al. v. BOWEN et al.

Nov. 15, 1917.

[94 S. E. 166.]

1. **Appeal and Error (§ 554 (2)*)—Motion to Dismiss Writ of Error—Omission of Bills of Exception from Record.**—Motion to dismiss writ of error for omission of the bills of exception from the record

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

†See valuable notes in 3 Gratt. (Va. Rep. Anno.) 628, 12 Gratt. (Va. Rep. Anno.) 634, cited by the court.